

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:

CHRISTOPHER M. COLBERT
Debtor

§
§
§
§
§

CASE NO. 07-34178-H3-7
(Chapter 7)

**Trustee's Motion to Void Judgment Lien of
C-Bar Enterprises, Inc. D/B/A Mr. Payroll Bryan/College Station**

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 20 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Represented parties should act through their attorney.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Rodney Tow, Trustee, files this Motion to Void Judgment Lien of C-Bar Enterprises, Inc. D/B/A Mr. Payroll Bryan/College Station, and in support thereof would show this Court as follows:

History and Background

1. On June 25, 2007, the Debtor filed a Voluntary Petition under Chapter 7 of Title 11 of the United States Code.

2. Rodney Tow was appointed Trustee, qualified, and continues to act in that capacity.
3. On September 2, 2007, the Trustee filed an Objection to the Debtor's Exemptions [Docket No. 25]. The Debtor was attempting to exempt as his homestead property located at 2301 Colgate Circle, College Station, Texas, "the Colgate Property"). The Debtor admitted that he had not lived in the property for the past 6 years and that his father was using the property as rental property. Further, the Debtor had not claimed the Colgate Property as exempt in three prior bankruptcies.
4. On October 10, 2007, this Court entered an Agreed Order Resolving Trustee's Objection to Exemption, [Docket No. 42], whereby the Debtor agreed that the Colgate Property was not his homestead and was property of the Estate.
5. On November 21, 2007, the Trustee filed a Motion to Sell the Colgate Property Free and Clear of all Liens, Claims and Encumbrances, [Docket No. 59].
6. On January 16, 2008, this Court entered an Order Approving Sale Free and Clear of all Liens, Claims and Encumbrances, [Docket No. 68]. The Order approved the sale of the Colgate Property to Gustavo and Maria Roman for \$108,000.00.
7. Prior to the closing the title report revealed that there were several lis pendens and/or judgment liens against the Colgate Property, none of which the Debtor had listed on his Schedules or Statement of Financial Affairs.
8. On February 13, 2008, the Trustee filed an Amended Motion to Sell Free and Clear of all Liens, Claims and Encumbrances, [Docket No. 70], to obtain Court permission to complete the sale as there would not be any return to unsecured creditors due to the liens against the property.

9. On February 21, 2008, this Court entered a second Order Approving Sale Free and Clear of all Liens, Claims and Encumbrances, [Docket No. 76], under the same terms and conditions as the prior Order.
10. The sale ultimately closed, the Trustee paid the mortgage holder and placed the remainder of the funds into the Estate.

Motion to Void Lien

11. On March 28, 2003, C-Bar Enterprises, Inc. D/B/A Mr. Payroll Bryan/College Station filed an Abstract of Judgment in Brazos County, Texas, in the judgment amount of \$2,022.44, attorney's fees in the amount of \$1750, costs in the amount of \$192 and prejudgment interest in the amount of \$145.09 against the Debtor and for a judgment amount of \$4,000 and prejudgment interest in the amount of \$242.61 against Kelly Colbert and the Debtor., ("the C-Bar Abstract"). A true and correct copy of the C-Bar Abstract is attached hereto as Exhibit "A".
12. Under Texas law, the mere rendition of a judgment does not automatically create a lien in favor of the prevailing party.¹ Rather, in order to acquire a judgment lien on real property owned by the judgment debtor, the judgment creditor must obtain an abstract of judgment complying with the statutory mechanisms provided under Tex. Prop. Code Ann. §52.001 - 52.043 (Vernon 1995 and Supp. 2005).
13. Pursuant to Section 52.003(a) of the Texas Property Code, an abstract of judgment must contain the following:
 - (1) the names of the plaintiff and defendant;
 - (2) the birthdate of the defendant, if available to the clerk or justice;

¹ *Burton Lingo Co. v. Warren*, 45 S.W.2d 750, 751-752 (Tex. Civ. App. – Eastland 1931, writ ref'd).

- (3) the last three numbers of the driver's license of the defendant, if available;
 - (4) the last three numbers of the social security number of the defendant, if available;
 - (5) the number of the suit in which the judgment was rendered;
 - (6) the defendant's address, or if the address is not shown in the suit, the nature of citation and the date and place of service of citation;
 - (7) the date on which the judgment was rendered;
 - (8) the amount for which the judgment was rendered;
 - (9) the amount of the balance due, if any, for child support arrearage; and,
 - (10) the rate of interest specified in the judgment.²
14. In addition, a judgment creditor must ensure that the clerk has properly recorded the abstract in the county real property records.³
15. Because a judgment lien is created by statute, substantial compliance with the statutory requirements is mandatory before a judgment creditor's lien will attach. It is well settled in Texas that it is the judgment creditor's responsibility to assure that the Clerk abstracts the judgment properly. Since a judgment lien is statutorily created, substantial compliance with the statutory requirement is *mandatory* before a judgment creditor's lien will attach.⁴ The purpose of the recorded and indexed abstract of judgment is to provide notice to subsequent purchasers of the existence of the judgment and the lien. When properly recorded and indexed, an abstract of judgment creates a judgment lien that is superior to the rights of subsequent purchasers and lienholders.⁵
16. In the instant case, the C-Bar Abstract is deficient for the following reasons:

² Texas Property Code Annotated Section 52.003(a) (Vernon 1995).

³ Tex.Prop.Code Ann. §52.004 (Vernon Supp. 2005)

⁴ *In re Herman*, 315 B.R. 399, 407 (E.D.Tex. 2004), citing *Citicorp Real Estate v. Banque of Arabe Internationale d'Investissement*, 747 S.W.2d 926, 928 - 930 (Tex. App. – Dallas 1988 writ denied); *Hoffman, McBryde & Co, P.C. v. Heyland*, 74 S.W.3d 906, 909 (Tex. App. – Dallas 2002) *appeal after remand*, 2004 WL 1626543 (Tex. App. – Dallas 2004, no pet.)

⁵ *Id.*

- a. It fails to set forth the birthdate of the defendant or state that it is not available as required under Tex. Prop. Code Ann. §52.003(a)(2). Although the abstract has a place for the birthdate it is left blank on the C-Bar Abstract.
 - b. It fails to set forth the last three numbers of the driver's license of the defendant or state that it is not available as required under Tex. Prop. Code Ann. §52.003(a)(3). Although the abstract has a place for the birthdate it is left blank on the C-Bar Abstract.
 - c. It fails to set forth the last three numbers of the social security number of the defendant or state that it is not available as required under Tex. Prop. Code Ann. §52.003(a)(4).; and,
 - d. It fails to set forth the amount of the balance due, if any, for child support arrearage as required under Tex. Prop. Code Ann. §52.003(a)(9).
17. Therefore, this Court should void the C-Bar Abstract and the lien created therein for its failure to comply with the provisions of §52.003(a)(2), (3), (4) & (9) of the Texas Property Code.
18. C-Bar Enterprises, Inc. should only be allowed an unsecured claim in this Estate in the amount of \$8,352.14.
19. The Trustee would submit that the C-Bar abstract of judgment is void it fails to provide the information required under §52.003(a)(2), (3), (4) & (9).

Respectfully submitted this 12th day of November, 2008.

TOW & KOENIG, PLLC.

By: /s/ Julie M. Koenig
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Attorneys for the Trustee

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been served by Nicole Oakley, a legal assistant in my office, on all of the parties listed below and on the attached service list either by ECF notification or by first class mail, proper postage affixed, on the 12th day of November, 2008.

/s/ Julie M. Koenig
Julie M. Koenig

Jack W. Dillard
Bryan, Stacy & Dillard, LLP
P.O. Box 192
Bryan, Texas 77806

Label Matrix for local noticing
0541-4
Case 07-34178
Southern District of Texas
Houston
Thu Nov 13 12:15:29 CST 2008

C-Bar Enterprises, Inc.
11683 FM 2549
Bryan, TX 77808-3999

4
United States Bankruptcy Court
PO Box 61288
Houston, TX 77208-1288

3s Relo Trans Llc
C/o Josh Benn
1021 University Dr E # 102
college station, TX 77840-2185

Allen R Hodgkins Iii
C/o Kenneth R Williams
405 S Ferdinand St
Baton Rouge, LA 70802

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4996 Highway 6 North
Houston, TX 77084-6905

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Po Box 70919
Houston, TX 77270-0919

At&t Wireless
Po ox 8229
Aurora, IL 60572-8229

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Dallas, TX 75265-0205

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Bryan Texas Utilities
Po Box 1000
Bryan, TX 77805-1000

Budget Truck Rental
PO Box 403962
Atlanta, GA 30384-3962

C Bar Enterprises
2909 West Highway 21
Bryan, TX 77803-1238

Charles Lee
1423 North woodland Avenue
Tucson, Az 85712-4142

Chase Bank
41915 Independence
Tampa, FL 33634

Citicapital commercial Corp
4650 Regent Blvd
Ste 200
Irving, TX 75063-2481

Collectx Inc
2101 west Ben white Blvd
Austin, TX 78704-7516

College station utilities
utilities Dept
Po Box 10230
College Station, TX 77842-0230

Cox Communications
Po Box 139004
Tyler, TX 75713-9004

David & Thuy Flosser
8910 Six Rivers Lane
Missouri City, TX 77459-6923

EMC Mortgage
Po Box 141358
909 Hidden Ridge Dr # 200
Irving, TX 75038-3826

Easton Press
c/o universal Fidelity Lp
Po Box 941911
Houston, TX 77094-8911

Enterprise Truck Rental
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Houston, TX. 77092

Excel Landscaping
739 Garden Acres Blvd
Bryan, TX 77802-4006

First American Bank
701 Harvey Rd
college Station, TX 77840-3546

First Premier Bank
Po Box 5147
Sioux Falls, SD 57117-5147

First credit services, Inc
one woodbridge center Ste 410
woodbridge, N7 07095-1151

Gas Tec
1522 S Texas Ave
Bryan, TX 77802-1015

Geico Insurance
Geico Plaza
Bethesda, MD 20810-0001

George M Cotton
435 Louisiana Ave
Baton Rouge, LA 70802-5820

Gexa Energy
Po Box 659410
San Antonio, Tx 78265-9410

Golds Gym
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1300
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Harris County Steel & Plumbing, Inc.
P. O. Box 218312
Houston, TX 77218-8312

(p)INTERNAL REVENUE SERVICE
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National Auto Finance
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Little Rock, AR 72223-7100

National van Lines
2800 Roosevelt Rd
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Nationwide Insurance
world Headquarters
one Nationwide Plaza
Columbus, OH. 43215-2220

Netspend Corporation
Po Box 2136
Austin, Tx 78768-2136

Nga Group, Inc.
20 Timber Ridge Road
North Brunswick, NJ 08902-5515

Nova information systems Inc
C/o Hull & Associates Pc
6200 Savoy Ste 440
Houston, TX 77036-3324

Paymentech merchant services
6010 Balcones Drive
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Payne, Watson, Miller, Maliche
Po Box 6900
Bryan, TX 77805-6900

Pebble creek owners ASSo
4500 Pebble Creek Parkway
college station, TX 77845-8942

Penske Truck Leasing Co. Llp Po Box 7429 Pasadena, CA 91109-7429	PHU DO 1818 Cross Spring Drive sugar Land, TX 77479-6968	Portfolio Recovery Associates, LLC. PO Box 12914 NORFOLK VA 23541-0914
Premier Bankcard/Charter P.O. Box 2208 Vacaville, CA 95696-8208	Providian Po Box 660548 Dallas, TX 75266-0548	Retail Merchant Association 902 Avenue J Lubbock, TX 79401-2719
Robin Eby 3415 serene Grove San Antonio, TX 78247-2948	Sherman Acquisitions Llc Portfolio Recovery Associates Po Box 12914 Norfolk, VA 23541-0914	Solomon & Solomon GTE Southwest Columbia circle Box 15019 Albany, NY. 12212-5019
Spiegel Po Box 9204 old Bethpage, NY 11804-9004	Trailer Rents 8222 North Freeway Houston, TX 77037-3608	Tx Dot 125 E 11th st Austin, TX 78701-2409
US Trustee Office of the US Trustee 515 Rusk Ave Ste 3516 Houston, TX 77002-2604	Uhaul International C/o NCO Financial systems Po Box 15740 Wilmington, DE 19850-5740	Usaa 9800 Fredricksburg Rd San Antonio, TX 78288-0002
Usaa Auto & Property Insurance Po Box 659464 San Antonio, TX 78265-9464	Verizon 1135 E Chocolate Ave Hershey, PA 17033-1292	Verizon Southwest Inc AFNI/Verizon 404 Brock Dr Bloomington,IL 61701-2654
World Savings Attn: Bankruptcy Dept. P O Box 659558 San Antonio, TX 78265-9558	Yellow Book Pacific c/o RMS Bankruptcy Recovery Services P O Box 5126 Timonium, Maryland 21094-5126	capital one Bank Deposit Recovery Dept. PO Box 152409 Irving, TX 75015-2409
consolidated communications 121 S 17th Street Mattoon, IL 61938-3987	credit Protections 1355 Noel Road suite 2100 Dallas, TX 75240	southwestern Bell Yellow Pages C/o Watkins & Watkins 24 Greenway Plaza #1210 Houston, TX 77046-2486
southwestern Bell Yellow Pages Po Box 630052 Dallas, TX 75263-0052	sudden Link communication PO Box 9037 Addison, TX. 75001-9037	universal Fidelity LP Attn John Jackson Po Box 941911 Houston, TX 77094-8911
wells Fargo Bank 3000 Briarcrest Drive Bryan, TX 77802-3054	wells Fargo Banking services Po Box 14415 Des Moines, IA 50306-3415	world savings 4101 Wiseman Blvd San Antonio, TX 78251-4201

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Houston, TX 77070-4958

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Irs
Po Box 24017
Fresno, CA 93779

(d)Irs
Po Box 24017
Fresno, CA 93799

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Mr. Payroll

(u)Austin
Last name unknown

(d)C Bar Enterprises
11683 Fm 2549
Bryan, TX 77808-3999

(d)Harris county steel & Plumbing
Po Box 218312
Houston, TX 77218-8312

(d)Providian
Po Box 660548
Dallas, Tx 75266-0548

(u)Laura Patterson
Lone Star Realty

End of Label Matrix
Mailable recipients 93
Bypassed recipients 6
Total 99